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Before the  
Federal Communications Commission  
Washington, D.C. 20554

JUN 14 9 25 AM '04

DISPATCH

In the matter of )

Verizon Petition for Forbearance From the Current  
Pricing Rules for the Unbundled Network Element  
Platform )

WC Docket No. 03-157

Joint Petition for Forbearance From the Current  
Pricing Rules for the Unbundled Network Element  
Platform )

WC Docket No. 03-189

**ORDER****Adopted: June 10, 2004****Released: June 10, 2004**

By the Chief, Pricing Policy Division:

1. On July 1, 2003, the Verizon Telephone Companies (Verizon) filed a Petition for Expedited Forbearance (*Verizon Petition*) asking the Commission to forbear from (1) applying Total Element Long Run Incremental Cost (TELRIC) pricing to the unbundled network element (UNE) platform, and (2) its rule allowing competitive local exchange carriers (LECs) leasing the UNE-platform, rather than the incumbent LEC, to collect per-minute access charges from interexchange carriers.<sup>1</sup> On July 31, 2003, Qwest Corporation, (Qwest), BellSouth Telecommunications, Inc., (BellSouth), and SBC Communications, Inc., (SBC) filed a petition (*Joint Petition*) seeking similar relief.<sup>2</sup> On June 9, 2004, Verizon filed a motion requesting that the Commission adopt a protective order to enable parties to file and review confidential and proprietary information related to issues raised by its forbearance petition.<sup>3</sup> Verizon claims that a protective order would aid parties and the Commission by enabling the submission and review of "confidential and competitively sensitive financial data" that is typically treated as confidential or proprietary by companies.<sup>4</sup> Verizon further claims that such information is a "trade secret and commercial or financial information" exempt from disclosure pursuant to exemption 4 to the Freedom of Information Act.<sup>5</sup>

2. We agree with Verizon that parties may file documents related to the *Verizon Petition* and the *Joint Petition* that contain proprietary or confidential information and that such documents should

<sup>1</sup> See *Pleading Cycle Established for Verizon Petition for Expedited Forbearance From the Commission's Current Pricing Rules for the Unbundled Network Element Platform*, WC Docket No. 03-157, Public Notice, 18 FCC Rcd 13106 (2003).

<sup>2</sup> See *Pleading Cycle Established for Joint Petition of Qwest, BellSouth, and SBC for Expedited Forbearance from the Commission's Current Pricing Rules for the Unbundled Network Element Platform*, WC Docket No. 03-189, Public Notice, 18 FCC Rcd 16577 (2003).

<sup>3</sup> *Review of the Commission's Rules Regarding the Pricing of Unbundled Network Elements and the Resale of Service by Incumbent Local Exchange Carriers*, WC Docket No. 03-157, Motion for Protective Order (filed June 9, 2003). While Verizon's motion seeks adoption of a protective order for documents relating to its petition pending in WC Docket No. 03-157, the protective order we adopt in this order applies to documents relating to both the *Verizon Petition* and the *Joint Petition*.

<sup>4</sup> *Id.* at 1.

<sup>5</sup> *Id.* at 1. See also 5 U.S.C. § 552(b)(4).

be made available pursuant to a protective order. Therefore, we adopt the attached protective order (Appendix A) to ensure that any confidential or proprietary documents submitted by a party to the proceeding are protected from general public disclosure.

3. The protective order we adopt in this proceeding does not constitute a resolution of the merits concerning whether any confidential information would be released publicly by the Commission upon a proper request under the Freedom of Information Act (FOIA).

4. Accordingly, the motion of Verizon seeking a protective order to facilitate the filing of confidential or proprietary information is GRANTED.

5. Accordingly, IT IS ORDERED that, pursuant to sections 4(i), 4(j), and 251 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j) and 251, and authority delegated pursuant to sections 0.91 and 0.291 of the Commission's rules, 47 C.F.R. §§ 0.91 and 0.291, the protective order contained in Appendix A to this order IS ADOPTED, and IS EFFECTIVE upon its release.

FEDERAL COMMUNICATIONS COMMISSION



Tamara L. Preiss  
Chief  
Pricing Policy Division  
Wireline Competition Bureau

**APPENDIX A****PROTECTIVE ORDER****WC DOCKET NOS. 03-157 and 03-189**

1. **Introduction.** Documents submitted to the Commission in the course of these proceedings may represent or contain confidential or proprietary information. To ensure that documents and materials in the above-referenced proceedings considered by a party to be confidential and proprietary are afforded protection, the Wireline Competition Bureau adopts this Protective Order.

2. **Non-Disclosure.** Except with the prior written consent of the person originally designating a document to be stamped as a confidential document, or as hereinafter provided under this order, no stamped confidential document may be disclosed to any person. A "stamped confidential document" means any document which bears the legend (or which shall otherwise have had the legend recorded upon it in a way that brings its attention to a reasonable examiner) "CONFIDENTIAL-SUBJECT TO PROTECTIVE ORDER" to signify that it contains information believed to be subject to protection under the Commission's rules. For purposes of this order, the term "document" means all written, recorded, or graphic material, whether produced or created by a party or another person, whether produced pursuant to the Commission's rules, pursuant to subpoena, by agreement, or otherwise. Documents that quote, summarize, or contain materials entitled to protection may be accorded status as a stamped confidential document, but, to the extent feasible, shall be prepared in such a manner that the confidential information is bound separately from the information not entitled to protection.

3. **Permissible Disclosure.** Notwithstanding paragraph 2, stamped confidential documents may be disclosed subject to the provisions of subparagraphs (a) and (b) to the following persons if disclosure is reasonably necessary for such persons to render professional services in this proceeding: counsel of record for parties that may file documents in this proceeding, including in-house counsel who are actively engaged in the conduct of this proceeding; partners, associates, secretaries, paralegal assistants, and employees of such counsel; outside consultants or experts retained to render professional services in this proceeding, provided that they are under the supervision of the counsel of record; and in-house economists and regulatory analysts, provided that they are under the supervision of the counsel of record. Such documents may also be disclosed to relevant employees of regulatory agencies, Commission employees involved in this proceeding, and to any person designated by the Commission in the interest of justice, upon such terms as the Commission may deem proper.

(a) Notwithstanding any other provision of this order, before any disclosure shall occur, any individual (other than a Commission employee) to whom confidential information is disclosed must certify in writing that he/she has read and understands this protective order, agrees to abide by its terms, and understands that unauthorized disclosures of the stamped confidential documents are prohibited. A copy of each such certification shall be provided to the party that designated the information confidential. (See Attachment A for a model certification.)

(b) Before disclosing a stamped confidential document to any person who is listed in this paragraph (other than an attorney) and who is employed by a competitor or potential competitor of the party that so designated the document, the party seeking such disclosure shall give at least five days' advance notice in writing to the counsel who designated such information as confidential, stating the names and addresses of the person(s) to whom the disclosure will be made, identifying with particularity the documents to be disclosed, and stating the purposes of such disclosure. No such disclosure shall be made within the five-day period. If, within the five-day period, a motion is filed objecting to the proposed disclosure, disclosure is not permissible until the Commission has denied such motion and disclosure is permitted under 47 C.F.R. § 0.459. Any such motion shall be hand-served on the party seeking such disclosure.

4. Access to Confidential Information. Any party producing confidential information pursuant to this order shall designate a Washington, D.C. location and such other locations as may be convenient at which all parties shall be permitted access to and review of requested confidential information pursuant to the other terms of this order, or pursuant to alternative arrangements agreed upon by the parties. Any such access or review may be limited to regular business hours after reasonable notice by the requesting party.

5. Confidential Information Filed in the Record. Stamped confidential documents and other confidential information may be offered in the record of this proceeding, provided that such confidential information is furnished under seal. The party submitting confidential documents shall ensure that each page bears the legend "CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER."

6. Commission Treatment of Confidential Information. If confidential documents are submitted to the Commission in accordance with paragraph 5, the materials shall remain sealed while in the Secretary's office or such other place as the Commission may designate so long as they retain their status as stamped confidential documents. The Commission may, *sua sponte* or by petition, determine that all or part of the information claimed by the producing party to be confidential is not entitled to such treatment. *See generally* 47 C.F.R. § 0.459.

7. Use. Persons obtaining access to stamped confidential documents under this order shall use the information only in the conduct of this proceeding and any judicial proceeding arising therefrom, and shall not use such information for any other purpose, including business, governmental, commercial, or other administrative or judicial proceedings. Persons obtaining access to confidential information under the terms of this order may disclose, describe, or discuss the confidential information in any pleading filed in this proceeding, provided that such pleading is stamped confidential and filed under seal, and provided that a separate public version is filed in which all confidential information is redacted. Persons filing pleadings based on confidential information provided by others shall serve such pleadings by hand or overnight delivery on the party originally requesting confidential treatment of the underlying information.

8. Subpoena by Courts or Other Agencies. If a court or another administrative agency subpoenas or orders production of stamped confidential documents which a party has obtained under terms of this order, such party shall promptly notify the party and any other person who designated the document as confidential of the pendency of such subpoena or order.

9. Client Consultation. Nothing in this order shall prevent or otherwise restrict counsel from rendering advice to their clients regarding this proceeding and, in the course thereof, relying generally on examination of stamped confidential documents submitted in this proceeding; provided, however, that in rendering such advice and otherwise communicating with such client, counsel shall not make specific disclosure of any item so designated except pursuant to the procedures of paragraph 3 above.

10. Prohibited Copying. If a document contains information so sensitive that it should not be copied by anyone, it shall bear the additional legend, "Copying Prohibited." Application for relief from this restriction against copying may be made to the Commission, with notice to counsel so designating the document.

11. Non-Termination. The provisions of this order shall not terminate at the conclusion of this proceeding.

12. Modification Permitted. Nothing in this order shall prevent any party or other person from seeking modification of this order.

13. Responsibility of Attorneys. The attorneys of record are responsible for employing reasonable measures to control, consistent with this order, duplication of, access to, and distribution of copies of stamped confidential documents. Parties shall not duplicate any stamped confidential document except working copies and for purposes of filing at the Commission under seal.

14. Return of Confidential Documents. Within two weeks after final resolution of this proceeding (which includes administrative or judicial review), parties that have received stamped confidential documents shall either return all copies of such documents in their possession to the party that submitted the documents, or destroy all such confidential documents.

15. Penalties. In addition to any other penalties or remedies authorized under the Communications Act, the Commission's rules, the common law or other source of law, any failure to abide by the terms of this order may result in dismissal of a party's pleadings, or censure, suspension, or disbarment of the attorneys involved, *see* 47 C.F.R. § 1.24, or possible referral to the relevant local bar.

FEDERAL COMMUNICATIONS COMMISSION



Tamara L. Preiss

Chief

Pricing Policy Division

Wireline Competition Bureau

**ATTACHMENT A TO APPENDIX A****WC Docket Nos. 03-157 and 03-189**

I have received a copy of the Protective Order in WC Docket Nos. 03-157 and 03-189. I have read the Protective Order and agree to comply with and be bound by its terms and conditions. I understand, in particular, that unauthorized disclosure, or the use of the information for competitive commercial or business purposes, will constitute a violation of the Protective Order.

**SIGNATURE:** \_\_\_\_\_**NAME PRINTED:** \_\_\_\_\_**TITLE:** \_\_\_\_\_**ADDRESS:** \_\_\_\_\_

\_\_\_\_\_

**REPRESENTING:** \_\_\_\_\_**EMPLOYER:** \_\_\_\_\_**DATE:** \_\_\_\_\_